



## Memorandum

### **PRIVILEGED AND CONFIDENTIAL ATTORNEY WORK PRODUCT**

TO: Kateri Callahan  
Gail Hendrickson

FROM: Ben Yamagata  
Britt Fleming

DATE: October 12, 2001

RE: EAct Requirements and LSVs

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You asked us to provide EVAA with a memorandum which discusses the legal rationale for why low speed vehicles (LSVs) should satisfy the alternative fuel vehicle acquisition requirements contained in the Energy Policy Act of 1992 (EAct). We have provided below a description of the requirements in EAct as well as a discussion of the characteristics of LSVs, which clearly meet the statutory definition of alternative fuel vehicle under the Act. As a result, where a LSV meets the statutory definition of an alternative fuel vehicle and the owner/operator of an EAct "covered fleet" otherwise meets the requirements of the statute and implementing regulations, such LSV should be treated as an eligible vehicle for purposes of compliance with EAct requirements.

### **DISCUSSION**

Sections 501 and 508 of EAct contain mandatory acquisition requirements for alternative fuel provider fleets and State fleets respectively. Both sections require that of their light duty vehicle acquisitions, both fuel providers and State fleets must acquire increasing numbers of "alternative fueled vehicles." Therefore, the acquisition of a vehicle that meets the characteristics of an "alternative fueled vehicle," as that term is defined in EAct, should satisfy a covered fleet's EAct acquisition needs.

The term "alternative fueled vehicle" is defined in Section 301(3) of EAct as a "dedicated vehicle or a dual fueled vehicle."<sup>1</sup> Further, the term "dedicated vehicle" is defined in Section 301(6) as either "an automobile that operates only on alternative fuel" (the definition contained in the Motor Vehicle Information and Cost Savings Act) OR a "motor vehicle, other than an automobile, that

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<sup>1</sup> For purposes of this memorandum, the portion of this definition referring to a "dedicated vehicle" has the most relevance.

operates solely on alternative fuel.” Accordingly, both automobiles and other motor vehicles that operate only on alternative fuels qualify as dedicated vehicles and if acquired, would satisfy a fleet’s acquisition requirements.

The next important inquiry is what constitutes a “motor vehicle” for purposes of EAct. Section 301(13) of EAct defines “motor vehicle” with a reference to the definition provided in Section 216(2) of the Clean Air Act, which is “any self-propelled vehicle designed for transporting persons or property on a street or highway.” It is important to point out that this definition was altered slightly in the implementing regulations. According to the preamble to the fleet regulations, as a response to comments, the Department of Energy (DOE) added to the “motor vehicle” definition an express exclusion of non-road vehicles, defining “non-road vehicle” as “a vehicle not licensed for on-road use, including such vehicles used primarily for industrial, farming or commercial use, for rail transportation, at an airport, or for marine purposes.” 10 C.F.R. § 490.2. In light of the additional requirements imposed by this definition in the regulations, a vehicle must be licensed for on-road use in order to qualify as a motor vehicle under EAct.

A low speed vehicle (LSV) is defined in the Federal Motor Vehicle Safety Standard No. 500 as a “4-wheeled motor vehicle, other than a truck, whose speed attainable in 1.6 km (1 mile) is more than 32 kilometers per hour (20 miles per hour) and not more than 40 kilometers per hour (25 miles per hour) on a paved surface.” 40 C.F.R. § 571.3. In addition, the LSVs currently in production run only on alternative fuels. Therefore, a LSV is a 4-wheeled motor vehicle, which runs only on alternative fuel.

According to the definitions of the terms discussed above, covered fleets under EAct can satisfy their acquisition requirements if they acquire self-propelled vehicles designed for transporting persons or property on a street or highway that operate solely on alternative fuels. As indicated above, a LSV would meet the statutory criteria, especially since there are no apparent requirements in the statutory definitions in EAct that an alternative fuel vehicle must achieve a certain speed. There is an important caveat to this conclusion—the definition for “motor vehicle” contained in DOE’s implementing regulations expressly excludes non-road vehicles. As noted above, a “non-road vehicle” is defined in the regulations as a vehicle not licensed for on-road use. Therefore, if a LSV is not licensed for use on the road, arguably it would fail to meet all the requirements necessary to qualify as an EAct vehicle according to the regulations. It is important to underscore that this license distinction is only contained in the regulations and not in the actual statute itself. It is also important to note that the license distinction may be a moot issue since many LSVs are being licensed in States for on-road use.